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DEC 11 2008

In re Application of :
Van Nest et al. : DECISION ON APPLICATION
Application No. 09/642,492 : FOR
Filed: August 18, 2000 : PATENT TERM ADJUSTMENT
Atty Docket No. 377882000800 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705," filed November 14, 2008. Applicants request that the initial determination of patent term adjustment be corrected from seven hundred sixty-four (764) days to seven hundred ninety-one (791) days.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED to the extent indicated herein.**

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is SEVEN HUNDRED THIRTY-TWO (732) days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On August 14, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 764 days. On November 14, 2008, applicants timely¹ submitted an application for patent term adjustment (with required fee). Applicants request that an additional credit of 27 days be added to the 764 days of adjustment indicated on the notice of allowance.

¹ The Issue Fee payment was also received on November 14, 2008.

The record supports a conclusion that the patent issuing from this application is not subject to a terminal disclaimer.

The calculation of patent term adjustment has been reviewed and it has been determined that with respect to the period of reduction of 27 days, applicants are correct. Entry of a period of reduction of 27 days pursuant to 37 CFR 1.704(c)(8), for the filing of a supplemental response on March 12, 2003, is not warranted. As pointed out by applicants, 37 CFR 1.704(c)(8) provides that a paper is not a failure to engage within the meaning of 1.704(c)(8) if it is *expressly requested by the examiner*. The record establishes that the response filed March 12, 2003 was expressly requested by the examiner per the interview summary mailed February 24, 2003. Accordingly, the period of reduction of 27 days is being removed.

However, a review of the record reveals a basis for entry of a further period of reduction pursuant to 37 CFR 1.704(b). 37 CFR 1.704(b) provides that:

With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

Applicants did not file a complete and proper response to the Notice to File Missing Parts of Application mailed October 5, 2000, until March 5, 2001. This was 59 days in excess of the three-month period provided for in 37 CFR 1.704(b). Thus, with

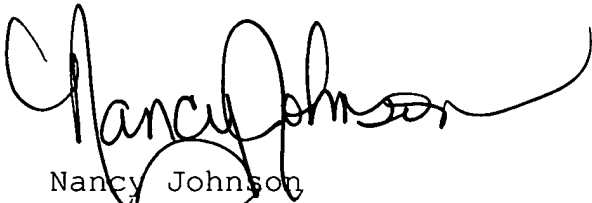
respect to responding to the Notice to File Missing Parts of Application, applicants failed to engage in reasonable efforts to conclude processing or examination within the meaning of 37 CFR 1.704(b). The period of reduction is 59 days, counting the number of days in the period beginning on January 6, 2001, the day after the date that is three months after the date of mailing of the Notice, and ending on March 5, 2001, the date the reply was filed. A period of reduction of 59 days is being entered.

Given the removal of the period of reduction of 27 days and entry of the period of reduction of 59 days, the correct determination of PTA at the time of the mailing of the notice of allowance is SEVEN HUNDRED THIRTY-TWO (732) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of the application. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized initial "N" and a long, sweeping underline.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PALM calculation

Day : Wednesday

Date: 12/10/2008

Time: 16:09:43

PALM INTRANET

PTA Calculations for Application: 09/642492

Application Filing Date:	08/18/2000	PTO Delay (PTO):	1072
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	308
Post-Issue Petitions:	0	Total PTA (days):	732
PTO Delay Adjustment:	-32		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
122	12/10/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		59	
121	12/10/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	27		
111	08/14/2008	MAIL NOTICE OF ALLOWANCE			
110	08/14/2008	ISSUE REVISION COMPLETED			
107	08/07/2008	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
106	08/07/2008	DOCUMENT VERIFICATION			
105	08/07/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
104	08/07/2008	CASE DOCKETED TO EXAMINER IN GAU			
103	08/07/2008	EXAMINER'S AMENDMENT COMMUNICATION			
102	08/02/2008	NOTICE OF ALLOWABILITY			
99	07/23/2008	MAIL BPAI DECISION ON APPEAL - REVERSED	955		65
98	07/23/2008	BPAI DECISION - EXAMINER REVERSED			
97	06/25/2008	CONFIRMATION OF HEARING BY APPELLANT			
96	06/04/2008	NOTIFICATION OF APPEAL HEARING			
95	04/17/2008	DOCKETING NOTICE MAILED TO APPELLANT			
94	04/17/2008	ASSIGNMENT OF APPEAL NUMBER			
93	04/02/2008	APPEAL AWAITING BPAI DOCKETING			
92	11/28/2007	MAIL REPLY BRIEF NOTED BY EXAMINER			
91	11/26/2007	REPLY BRIEF NOTED BY EXAMINER			
90	10/15/2007	DATE FORWARDED TO EXAMINER			
89	09/28/2007	REPLY BRIEF FILED			
88	09/28/2007	REQUEST FOR ORAL HEARING			
87	08/31/2007	EXAM. ANS. REVIEW COMPLETE			
86	07/30/2007	MAIL EXAMINER'S ANSWER			

85	07/23/2007	EXAMINER'S ANSWER TO APPEAL BRIEF			
84	02/24/2007	APPEAL BRIEF REVIEW COMPLETE			
83	02/24/2007	DATE FORWARDED TO EXAMINER			
82	12/28/2006	APPEAL BRIEF FILED			
81	12/05/2006	NOTICE -- DEFECTIVE APPEAL BRIEF			
80	12/04/2006	APPEAL BRIEF REVIEW COMPLETE			
79	11/20/2006	DATE FORWARDED TO EXAMINER			
78	11/06/2006	AMENDMENT AFTER BRIEF			
77	11/20/2006	DATE FORWARDED TO EXAMINER			
76.1	11/06/2006	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
76	11/06/2006	APPEAL BRIEF FILED			
75	10/18/2006	NOTICE -- DEFECTIVE APPEAL BRIEF			
74	08/07/2006	APPEAL BRIEF REVIEW COMPLETE			
73	08/07/2006	DATE FORWARDED TO EXAMINER			
72.1	07/12/2006	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
72	07/12/2006	APPEAL BRIEF FILED			
71	07/12/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
70	01/26/2006	MAIL ADVISORY ACTION (PTOL - 303)			
69	01/23/2006	ADVISORY ACTION (PTOL-303)			
68	01/13/2006	CASE DOCKETED TO EXAMINER IN GAU			
67	12/29/2005	DATE FORWARDED TO EXAMINER			
66	12/12/2005	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			
65	12/12/2005	NOTICE OF APPEAL FILED		90	61
64	12/12/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
63	11/23/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
62	07/05/2005	CORRESPONDENCE ADDRESS CHANGE			
61	06/13/2005	MAIL FINAL REJECTION (PTOL - 326)	52		54
60	06/09/2005	FINAL REJECTION			
59	12/22/2004	REFERENCE CAPTURE ON IDS			
58.7	12/22/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
58	12/22/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

57	01/05/2005	DATE FORWARDED TO EXAMINER			
56	12/22/2004	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
55	01/05/2005	DATE FORWARDED TO EXAMINER			
54	12/22/2004	REQUEST FOR CONTINUED EXAMINATION (RCE)			
53	01/05/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
52	12/22/2004	WORKFLOW INCOMING AMENDMENT IFW			
51	12/22/2004	WORKFLOW - REQUEST FOR RCE - BEGIN			
50	09/22/2004	MAIL FINAL REJECTION (PTOL - 326)			
49	09/20/2004	FINAL REJECTION			
48	07/02/2004	DATE FORWARDED TO EXAMINER			
47	06/14/2004	RESPONSE AFTER NON-FINAL ACTION		5	45
46	06/14/2004	WORKFLOW INCOMING AMENDMENT IFW			
45	03/09/2004	MAIL NON-FINAL REJECTION	65		42
44	03/08/2004	NON-FINAL REJECTION			
43	12/01/2003	DATE FORWARDED TO EXAMINER			
42	09/04/2003	RESPONSE AFTER NON-FINAL ACTION		2	41
41	06/02/2003	MAIL NON-FINAL REJECTION			
40	05/30/2003	NON-FINAL REJECTION			
39	03/28/2003	DATE FORWARDED TO EXAMINER			
38	03/12/2003	SUPPLEMENTAL RESPONSE		27	34
37	02/24/2003	DATE FORWARDED TO EXAMINER			
36	02/13/2003	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
35	02/24/2003	DATE FORWARDED TO EXAMINER			
34	02/13/2003	REQUEST FOR CONTINUED EXAMINATION (RCE)			
33	02/24/2003	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
32	02/13/2003	REQUEST FOR EXTENSION OF TIME - GRANTED			
31	02/24/2003	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
30	01/17/2003	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
29	02/13/2003	WORKFLOW - REQUEST FOR RCE - BEGIN			
28	01/17/2003	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			

27	11/21/2002	MAIL ADVISORY ACTION (PTOL - 303)			
26	11/18/2002	ADVISORY ACTION (PTOL-303)			
25	10/30/2002	DATE FORWARDED TO EXAMINER			
24	10/23/2002	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			
23	10/23/2002	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
22	10/23/2002	NOTICE OF APPEAL FILED		92	20
21	10/23/2002	REQUEST FOR EXTENSION OF TIME - GRANTED			
20	04/23/2002	MAIL FINAL REJECTION (PTOL - 326)			
19	04/22/2002	FINAL REJECTION			
18	02/13/2002	DATE FORWARDED TO EXAMINER			
17	01/30/2002	RESPONSE AFTER NON-FINAL ACTION		92	14
16	01/30/2002	REQUEST FOR EXTENSION OF TIME - GRANTED			
15	10/03/2001	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
14	07/30/2001	MAIL NON-FINAL REJECTION			
13	07/27/2001	NON-FINAL REJECTION			
12	07/02/2001	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
11	07/09/2001	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
10	07/09/2001	CORRESPONDENCE ADDRESS CHANGE			
9.7	05/21/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9	05/21/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	04/04/2001	CASE DOCKETED TO EXAMINER IN GAU			
7	03/27/2001	APPLICATION DISPATCHED FROM OIPE			
6	03/27/2001	APPLICATION IS NOW COMPLETE			
5	10/05/2000	CORRESPONDENCE ADDRESS CHANGE			
4	09/05/2000	IFW SCAN & PACR AUTO SECURITY REVIEW			
3	09/05/2000	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
2	08/18/2000	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
1	08/18/2000	INITIAL EXAM TEAM NN			